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SUBJECT: SUPREME COURT OVERTURNS CONVICTIONS IN LANDMARK
HUMAN RIGHTS CASE

SUMMARY

1. (SBU) ON MAY 27, THE SUPREME COURT OF SRI LANKA EXONERATED THE FOUR REMAINING MEN CONVICTED OF PARTICIPATING IN THE BINDUNUWEWA MASSACRE OF OCTOBER 2000, WHICH LEFT 27 TAMIL YOUTHS DEAD AND 14 INJURED AT A DETENTION CENTER IN BADULLA DISTRICT. THE FIFTH SUSPECT WAS ACQUITTED IN JULY 2004. THE ORIGINAL CONVICTIONS HANDED DOWN BY THE HIGH COURT WERE OVERTURNED ON APPEAL, ON THE GROUNDS THAT THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE FIVE SINHALESE SUSPECTS. AS A RESULT OF THE RULING, NO ONE HAS BEEN CHARGED IN THE HIGH PROFILE AND ETHNICALLY SENSITIVE CASE, A SIGN OF THE INABILITY OF THE JUDICIAL SYSTEM TO HOLD GUILTY PARTIES ACCOUNTABLE FOR HUMAN RIGHTS VIOLATIONS. THE FAILURE OF THE GOVERNMENT OF SRI LANKA (GSL) TO IDENTIFY THE PERPETRATORS AND PUNISH THEM WILL ADD TO THE GRIEVANCES OF THE TAMIL COMMUNITY AND COULD AGGRAVATE MISTRUST ACROSS ETHNIC LINES. END SUMMARY.

SURPRISE ACQUITTALS

2. (U) ON MAY 27, THE SUPREME COURT OVERTURNED THE CONVICTIONS OF THE REMAINING FOUR SUSPECTS TAGGED WITH THE KILLINGS OF 27 TAMIL INMATES AT A DETENTION CENTER FOR UNDERAGE LTTE CADRES IN OCTOBER 2000. THE INMATES INCLUDED THOSE WHO WERE SEEKING ASYLUM FROM THE LIBERATION TAMIL TIGERS EELAM (LTTE) AND THOSE SUSPECTED OF BEING LTTE CHILD SOLDIERS, RANGING IN AGE FROM 10 TO 31. THE ATTACK OCCURRED ON OCTOBER 24, 2000, WHEN INMATES AT THE BINDUNUWEWA DETENTION CENTER IN BADULLA DISTRICT BEGAN TO COMPLAIN THAT THEY WERE BEING HELD PAST THEIR EXPECTED DATE OF RELEASE. AFTER THE COMPLAINTS ESCALATED INTO A PROTEST, A SHOT WAS FIRED BY A POLICE OFFICER AND AN INMATE ATTACKED ANOTHER POLICE OFFICER. THE FOLLOWING MORNING, VILLAGERS INVADED THE CAMP AND CLUBBED, STABBED, AND BURNED INMATES ALIVE, KILLING 27 AND WOUNDING 14. ACCORDING TO EYEWITNESS TESTIMONY, THE POLICE OFFICERS DID NOTHING TO PREVENT THE CROWD FROM ATTACKING THE INMATES AND SHOT SOME OF THE INMATES TRYING TO ESCAPE THEIR ATTACKERS. FURTHERMORE, THE POLICE REPORTEDLY PLACED TEAR GAS IN A NEARBY QUARRY SEVERAL DAYS AFTER THE ATTACK, FAILED TO SUBMIT ALL PHOTOS TAKEN BY A POLICE PHOTOGRAPHER AFTER THE INCIDENT, AND HID THEIR DUTY LOGS IN AN ATTEMPT TO MASK THEIR INACTION AND MISTAKES.

3. (SBU) ON MARCH 8, 2001, PRESIDENT CHANDRIKA BANDARANAIKE KUMARATUNGA APPOINTED A PRESIDENTIAL COMMISSION TO INVESTIGATE THE BINDUNUWEWA MASSACRE TO DETERMINE THE INDIVIDUALS RESPONSIBLE FOR THE ATTACK. THE REPORT ISSUED TO THE PRESIDENT BY THE PRESIDENTIAL COMMISSION RECOMMENDED THAT DISCIPLINARY ACTION BE TAKEN AGAINST THE FOLLOWING POLICE OFFICERS FOR DERELICTION OF DUTY: A.W. DAYARATNE, R.M.T.K. JAYANTHA SENEVIRATNE, S.J. KARUNASENA, N.G.S. WALPOLA, T. RATNAYAKE, K.W.C.N. ABEYNARAYANA, Y.K. ABEYRATNE, AND P. ABEYRATNE.

4. (U) IN JULY 2003, THE HIGH COURT OF COLOMBO CONVICTED THREE VILLAGERS AND TWO POLICE OFFICERS OF PARTICIPATING IN AN UNLAWFUL ASSEMBLY. CIVILIANS D.M.S DISSANAYAKE, M.A. SAMMY, AND R.M. PREMANANDA WERE SENTENCED TO DEATH ALONG WITH POLICE OFFICERS J. KARUNASENA AND T. RATNAYAKE. ALTHOUGH IT WAS UNCLEAR WHETHER THE POLICE OFFICERS INDICTED ACTUALLY SHOT THE INMATES, THEIR FAILURE TO ARREST OFFENDERS AND PREVENT THE ATTACK LEGALLY MADE THEM PART OF THE UNLAWFUL ASSEMBLY. ALL FIVE APPEALED THEIR CONVICTIONS TO THE SUPREME COURT.

5. (U) ON MAY 27, 2005, THE SUPREME COURT OVERTURNED THE COLOMBO HIGH COURT RULING, CITING A LACK OF EVIDENCE TO CONVICT THE FOUR MEN. (SIMILARLY, THE SUPREME COURT HAD ACQUITTED T. RATNAYAKE IN JULY 2004 DUE TO INSUFFICIENT EVIDENCE.) EYEWITNESSES CLAIMING TO HAVE SEEN THE CONVICTED MEN PARTICIPATE IN THE ATTACK RECANTED THEIR STORIES IN FRONT OF THE SUPREME COURT, THUS THE SUPREME COURT RULED THAT THERE WAS NO EVIDENCE THAT SUGGESTED GUILT ON THE PART OF THE FIVE SINHALESE INDIVIDUALS. THE SUPREME COURT ALSO FOUND THAT THE HIGH COURT JUSTICES HAD MADE

ERRORS IN HOW THEY ANALYZED THE WITNESSES' TESTIMONY.

EXPERT OPINIONS

16. (U) ON JUNE 2, HUMAN RIGHTS WATCH (HRW) ISSUED A PRESS RELEASE URGING A REINVESTIGATION TO IDENTIFY THOSE RESPONSIBLE FOR THE MASSACRE, INCLUDING TOP-LEVEL POLICE OFFICIALS. THE HRW STATEMENT POINTED OUT THAT ALTHOUGH THE PRESIDENTIAL COMMISSION CITED THE LOCAL POLICE COMMANDERS DAYARATNE AND SENEVIRATNE FOR DERELICTION OF DUTY, THESE OFFICERS HAVE NOT BEEN INDICTED OR PUNISHED. THE HRW STATEMENT ALSO SAID THE GROUP IS CONCERNED THAT THE SUPREME COURT DID NOT EXERCISE IMPARTIALITY, ACCUSING THE JUSTICES OF BEING OPENLY HOSTILE TOWARDS THE PROSECUTION.

17. (U) ON MAY 30, THE ASIAN HUMAN RIGHTS COMMISSION (AHRC) RELEASED A STATEMENT CALLING FOR THE RESIGNATION OF THE INSPECTOR GENERAL OF POLICE (IGP) CHANDRA FERNANDO, IF HE FAILS TO INVESTIGATE THE DERELICTION OF DUTY BY POLICE OFFICERS IN THE BINDUNUWEWA MASSACRE. THE AHRC ACCUSES THE SRI LANKAN JUSTICE SYSTEM OF BEING DEFECTIVE AND ENSURING IMMUNITY FOR OFFENDERS. IN ADDITION, THE STATEMENT OF AHRC ENCOURAGED THE SRI LANKAN PEOPLE TO SPEAK OUT AGAINST WHAT IT DESCRIBES AS THE BIASED JUDICIAL SYSTEM.

18. (SBU) SALIYA PIERIS, ATTORNEY-AT-LAW OF THE SUPREME COURT OF COLOMBO, TOLD A POLITICAL INTERN THAT HE BELIEVES THE RULING IS FAIR BECAUSE OF A LACK OF EVIDENCE. THE INVESTIGATION SHOULD HAVE BEEN MORE THOROUGH AND THE INVESTIGATIVE UNIT SHOULD BE INDICTED, ACCORDING TO PIERIS. WHILE HE BELIEVES DISCIPLINARY ACTION SHOULD BE TAKEN AGAINST POLICE OFFICIALS, THEY SHOULD NOT BE CHARGED WITH PARTICIPATION IN AN UNLAWFUL ASSEMBLY. THE POLICE HAD TRIED TO CONTROL THE CROWD, ALTHOUGH THEY DID NOT EXPECT AND WERE NOT PREPARED TO HANDLE THE FEROCITY OF THE SITUATION, EXPLAINS PIERIS.

19. (SBU) ACHALA WENGAPPULI, STATE COUNSEL OF THE ATTORNEY GENERAL'S OFFICE OF COLOMBO, TOLD POLOFF THAT HE AGREED WITH THE RULING THAT THERE WAS INSUFFICIENT EVIDENCE FOR CONVICTIONS. WENGAPPULI STATED THAT A RE-INVESTIGATION COULD BE LAUNCHED TO TRY TO LOCATE THOSE RESPONSIBLE FOR THE MASSACRE, BUT IT IS UNLIKELY THAT ANY NEW EVIDENCE WOULD SURFACE. HE ALSO SAID THAT THE IGP, WHO HAS THE AUTHORITY TO TAKE PUNITIVE ACTION AGAINST POLICE OFFICIALS, WILL NOT EXERCISE HIS DISCIPLINARY POWER SINCE HE HAS NOT DONE SO IN REGARD TO THIS CASE TO DATE. ANOTHER OPTION, WHICH WENGAPPULI THINKS WOULD LIKELY BE MORE FRUITFUL, IS FOR THE VICTIMS' FAMILIES TO BRING THE BINDUNUWEWA CASE BEFORE THE HUMAN RIGHTS COMMITTEE IN GENEVA. (THE OPTIONAL PROTOCOL ALLOWS THE HUMAN RIGHTS COMMITTEE TO CONSIDER VIOLATIONS OF HUMAN RIGHTS EXPERIENCED BY INDIVIDUALS THAT ARE NOT REDRESSED BY HIS OR HER DOMESTIC GOVERNMENT.)

10. (SBU) IN A JUNE 3 MEETING, RADHIKA COOMARASWAMY, CHAIRPERSON OF THE HUMAN RIGHTS COMMISSION IN SRI LANKA, TOLD A POLITICAL INTERN THAT SHE BELIEVES THE POLICE OFFICERS ARE GUILTY OF UNLAWFUL ASSEMBLY IN THEIR FAILURE TO STOP THE ATTACK. HOWEVER, SHE LAMENTED THE DIFFICULTY OF SUCCESSFULLY PROSECUTING CASES AGAINST POLICE OFFICERS. LIKE WENGAPPULI, SHE THINKS THE BEST OPTION IS FOR THE VICTIMS' FAMILIES TO BRING THE CASE TO THE HUMAN RIGHTS COMMITTEE TO SEEK COMPENSATION.

11. (SBU) M. REMADIOUS, ATTORNEY-AT-LAW AT THE CENTER FOR HUMAN RIGHTS AND DEVELOPMENT, TOLD US THAT HE FEELS THE POLICE SHOULD BE HELD ACCOUNTABLE FOR THE MASSACRE AND SHOULD BE INDICTED. HE CLAIMS THERE WAS SUFFICIENT EVIDENCE SINCE A POLICE PHOTOGRAPHER TOOK PHOTOS OF THE AFTERMATH OF THE ATTACK. HOWEVER, NOT ALL OF THE PHOTOS WERE SUBMITTED AND ONLY CUT-UP COPIES OF NEGATIVES WERE SUBMITTED FOR EVIDENCE, HE ACKNOWLEDGED. REMADIOUS ASSERTS THAT IT IS NOT POSSIBLE TO BRING THIS CASE BEFORE THE HUMAN RIGHTS COMMITTEE BECAUSE IT IS AN "INTERIOR CRIMINAL CASE," AND THUS THERE IS NO BASIS TO TAKE THE CASE OUT OF THE COUNTRY. ALSO, HE NOTES THAT FIVE OF THE INMATES' BODIES WERE NOT IDENTIFIED SO IT WOULD NOT BE POSSIBLE TO COMPENSATE THESE VICTIMS' RELATIVES.

12. (SBU) RORY MUNGOVEN, HEAD OF THE FIELD PRESENCE OF THE UNITED NATIONS HUMAN RIGHTS COMMISSION IN SRI LANKA, TOLD A POLITICAL INTERN THAT THE BINDUNUWEWA CASE COULD BE BROUGHT BEFORE THE HUMAN RIGHTS COMMITTEE. THE VICTIMS' FAMILIES WOULD HAVE TO SHOW THAT ALL NATIONAL REMEDIES HAVE BEEN EXHAUSTED AND THAT THE GSL HAS FAILED UNDER THE UNITED NATIONS HUMAN RIGHTS COVENANT TO REDRESS THE GRIEVANCES OF THE VICTIMS, MUNGOVEN EXPLAINED. HE PREDICTED THAT THE HUMAN RIGHTS COMMITTEE WOULD FIND IN FAVOR OF THE INMATES. IN THE PAST, THE GSL HAS FOLLOWED THE COMMITTEE'S SUGGESTIONS, SO MUNGOVEN BELIEVES THAT THE GSL WOULD COOPERATE AGAIN AND ISSUE COMPENSATION TO THE FAMILIES OF THOSE MASSACRED.

113. (U) THE LTTE-AFFILIATED NORTH EAST SECRETARIAT ON HUMAN RIGHTS (NESOHR) ISSUED AN URGENT APPEAL TO THE UNITED NATIONS HIGH COMMISSION ON HUMAN RIGHTS ABOUT THE BINDUNUWEWA CASE ON JUNE 8. A STATEMENT BY THE NESOHR PUTS FORTH ITS CLAIM THAT A PATTERN HAS DEVELOPED IN RECENT YEARS IN WHICH THE JUDICIAL SYSTEM HAS RULED IN FAVOR OF SINHALESE DEFENDANTS ACCUSED OF COMMITTING VIOLENT ACTS AGAINST TAMILS. THE FEW INVESTIGATIONS OF HUMAN RIGHTS VIOLATIONS HAVE YIELDED EVEN FEWER CONVICTIONS OF POLICE OFFICERS, THE NESOHR CONTENTS IN THE PRESS RELEASE.

COMMENT

114. (SBU) IT IS HARD TO BELIEVE THAT SUCH A HORRIFIC INCIDENT, WITH SO MANY PARTICIPANTS AND SO MANY SURVIVING VICTIMS, HAS PRODUCED NO RELIABLE EYEWITNESS TESTIMONY OR EVIDENCE TO CONVICT THE PERPETRATORS. EVEN IF THE POLICE DID NOT PARTICIPATE IN THE ATTACK, THE POLICE OFFICERS IN CHARGE WOULD SEEM TO BEAR SOME RESPONSIBILITY FOR FAILING TO HALT THIS ATTACK. THE FAILURE BY THE GSL TO PROSECUTE THESE GRISLY MURDERS WITH THEIR OBVIOUS ETHNIC OVERTONES WILL DO LITTLE TO PROMOTE TAMIL COMMUNITY CONFIDENCE IN GSL IMPARTIALITY.
LUNSTEAD